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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEROME DAROYA,
Plaintiff,
v.

MARY JOSEPHINE DAROYA-
LUSHINA; and DOMINICK
RAMOS,
Defendants.

CV 22-02695-RSWL-JC_x

**ORDER re: Defendants'
Motion to Dismiss** [13]

Plaintiff Jerome Daroya ("Plaintiff") initiated this Action [1] on April 22, 2022, against Defendants Mary Josephine Daroya-Lushina and Dominick Ramos (collectively, "Defendants"). Plaintiff brings a claim against Defendants for violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), along with state law claims for conversion, breach of fiduciary duty, constructive trust, and violation of the California Business and Professions Code.

Currently before the Court is Defendants' Motion to Dismiss ("Motion") [13], made pursuant to Rules 12(b)(1)

1 and (6) of the Federal Rules of Civil Procedure. Having
2 reviewed all papers submitted pertaining to this Motion,
3 the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court
4 **GRANTS** Defendant's Motion **with leave to amend.**

5 **I. BACKGROUND**

6 **A. Factual Background**

7 The First Amended Complaint ("FAC") alleges the
8 following:

9 Upon the death of their father, Plaintiff and
10 Defendant Mary Daroya-Lushina ("Daroya-Lushina")
11 inherited a property located at 21610 South Perry
12 Street, Unit 15 in Carson, California ("the Property").
13 FAC ¶ 10, ECF No. 12. On or about September 30, 2020,
14 Plaintiff and Daroya-Lushina created a limited liability
15 company known as Cookie and Kuya Enterprises, LLC
16 ("CKE"), to hold their joint interest in the Property.
17 Id. ¶¶ 10-11. Plaintiff and Daroya-Lushina each owned a
18 50% membership interest in CKE. Id. ¶ 11.

19 In 2021, Defendants jointly undertook a fraudulent
20 scheme to deprive Plaintiff of his interest in CKE, to
21 sell the Property, and to divert the proceeds from the
22 sale to themselves and away from Plaintiff. Id. ¶ 14.
23 On September 23, 2021, Ramos electronically filed a
24 fraudulent Statement of Information ("SOI") with the
25 California Secretary of State. Id. ¶ 15. This SOI
26 contained numerous falsehoods, including an altered
27 mailing address for CKE and a statement that Daroya-
28 Lushina was its sole manager. Id.

1 Around the same time, Defendants contacted
2 Opendoor, a company that makes cash offers for
3 properties. Id. ¶ 17. Defendants submitted fraudulent
4 documents to Opendoor, including a copy of CKE's
5 Operating Agreement showing that Plaintiff had a 5%
6 ownership interest in CKE rather than his actual 50%
7 ownership interest. Id. ¶ 19. Defendants submitted
8 further documentation suggesting that Plaintiff had
9 surrendered all interest in CKE. Id. Daroya-Lushina
10 proceeded to sell the Property to Opendoor for \$496,000
11 and did not provide any share of the proceeds to
12 Plaintiff. Id. ¶¶ 21-22.

13 Additionally, Daroya-Lushina falsely identified
14 herself as the sole officer and director of Jose K.
15 Daroya, CPA APC ("APC"), a company created by their
16 father prior to his passing. Id. ¶¶ 24-25. Defendants
17 allegedly obtained at least \$16,879 through a Paycheck
18 Protection Program loan and \$86,000 in Economic Injury
19 Disaster Loans on behalf of APC. Id. ¶ 25. Lenders are
20 now seeking to collect payments for these loans from
21 Plaintiff and his associated businesses. Id. Lastly,
22 Defendants attempted to fraudulently obtain a loan in
23 the name of one of Plaintiff's business clients, causing
24 the client to terminate his business relationship with
25 Plaintiff. Id. ¶ 26.

26 **B. Procedural Background**

27 Plaintiff filed his Complaint [1] on April 22,
28 2022, and filed his FAC [12] on June 20, 2022. The FAC

1 asserts claims against Defendants for: (1) civil RICO
2 violations; (2) conversion (against Daroya-Lushina
3 only); (3) breach of fiduciary duty; (4) violations of
4 California Business and Professions Code; and (5)
5 constructive trust.

6 Defendants filed the instant Motion to Dismiss [13]
7 on July 11, 2022. Plaintiff opposed [16] the Motion on
8 July 26, 2022. Defendants replied [17] on August 2,
9 2022.

10 II. DISCUSSION

11 A. Legal Standard

12 1. Rule 12(b)(6)

13 Rule 12(b)(6) of the Federal Rules of Civil
14 Procedure allows a party to move for dismissal of one or
15 more claims if the pleading fails to state a claim upon
16 which relief can be granted. Fed. R. Civ. P. 12(b)(6).
17 A complaint must "contain sufficient factual matter,
18 accepted as true, to 'state a claim to relief that is
19 plausible on its face.'" Ashcroft v. Iqbal, 556 U.S.
20 662, 678 (2009) (citation omitted). Dismissal is
21 warranted for "lack of a cognizable legal theory or the
22 absence of sufficient facts alleged under a cognizable
23 legal theory." Balistreri v. Pacifica Police Dep't, 901
24 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

25 In ruling on a 12(b)(6) motion, a court may
26 generally consider only allegations contained in the
27 pleadings, exhibits attached to the complaint, and
28 matters properly subject to judicial notice. Swartz v.

1 KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007). A court
2 must presume that all material allegations in the
3 complaint are true and construe them in the light most
4 favorable to the plaintiff. Klarfeld v. United States,
5 944 F.2d 583, 585 (9th Cir. 1991). While a complaint
6 need not contain detailed factual allegations, a
7 plaintiff must provide more than "labels and
8 conclusions" or "a formulaic recitation of the elements
9 of a cause of action." Bell Atl. Corp. v. Twombly, 550
10 U.S. 544, 555 (2007). The question is not whether the
11 plaintiff will ultimately prevail, but whether the
12 plaintiff is entitled to present evidence to support the
13 claims. Jackson v. Birmingham Bd. of Educ., 544 U.S.
14 167, 184 (2005) (quoting Scheuer v. Rhodes, 416 U.S.
15 232, 236 (1974)).

16 2. Rule 12(b)(1)

17 Rule 12(b)(1) of the Federal Rules of Civil
18 Procedure allows a litigant to seek dismissal of an
19 action for lack of subject matter jurisdiction. Under
20 28 U.S.C. § 1367, a court has supplemental jurisdiction
21 over all claims that form part of the same case or
22 controversy as claims over which the court has original
23 jurisdiction. However, a district court may decline to
24 exercise supplemental jurisdiction over a state law
25 claim when all claims over which it has original
26 jurisdiction have been dismissed. 28 U.S.C.
27 § 1367(c)(3). This decision should be informed by the
28 values of economy, convenience, fairness, and comity.

1 United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726
2 (1996) .

3 **B. Analysis**

4 1. RICO Claim

5 The RICO statute makes it unlawful for any person
6 to conduct or participate in an enterprise's affairs
7 through a pattern of racketeering activity. 18 U.S.C.
8 § 1962(c). To state a claim under RICO, Plaintiff must
9 allege facts establishing: "(1) conduct (2) of an
10 enterprise (3) through a pattern (4) of racketeering
11 activity (known as 'predicate acts') (5) causing injury
12 to plaintiff's 'business or property.'" Living Designs,
13 Inc. v. E.I. Dupont de Nemours & Co., 431 F.3d 353, 361
14 (9th Cir. 2005) (quoting Grimmett v. Brown, 75 F.3d 506,
15 510 (9th Cir. 1996)).

16 Defendants argue that Plaintiff's RICO claim must
17 be dismissed because the FAC fails to allege: (1) the
18 requisite predicate acts; (2) a pattern of racketeering
19 activity; (3) the existence of an enterprise; and (4) a
20 cognizable RICO injury. See Defs.' Mem. P. & A. in
21 Supp. of Mot. to Dismiss ("Mot.") 3:11-8:10, ECF No. 13-
22 1. The Court finds that Plaintiff's RICO claim fails
23 because the FAC fails to allege a cognizable RICO injury
24 that was proximately caused by a pattern of predicate
25 acts. The Court therefore **GRANTS** Defendant's Motion as
26 to Plaintiff's RICO cause of action.

27 a. Enterprise

28 An "enterprise" includes "any individual,

1 partnership, corporation, association, or other legal
2 entity, and any union or group of individuals associated
3 in fact although not a legal entity." 18 U.S.C.
4 § 1961(4). "Under RICO, two types of associations meet
5 the definition of enterprise: The first encompasses
6 organizations such as corporations and partnerships, and
7 other legal entities. The second covers any union or
8 group of individuals associated in fact although not a
9 legal entity." Shaw v. Nissan N. Am., Inc., 220 F.
10 Supp. 3d 1046, 1053 (C.D. Cal. 2016) (internal quotation
11 marks omitted) (quoting United States v. Turkette, 452
12 U.S. 576, 581-82 (1981)).

13 Here, Plaintiff argues that the FAC alleges two
14 distinct enterprises. See Opp'n 9:13-14, ECF No. 16.
15 First, it alleges that Daroya-Lushina and Ramos
16 "infiltrated and acted through CKE." Id. at 9:13-15.
17 Second, it alleges that an association-in-fact
18 enterprise existed between Daroya-Lushina, Ramos, CKE,
19 APC, and potentially others. Id. at 9:22-25. The Court
20 analyzes the allegations pertaining to each potential
21 enterprise in turn.

22 With regard to Defendants' alleged infiltration of
23 CKE, the Court finds that Plaintiff has adequately
24 alleged the existence of an enterprise. A RICO
25 enterprise must be "an entity separate and apart from
26 the pattern of [racketeering] activity in which it
27 engages." Turkette, 452 U.S. at 583. The FAC describes
28 CKE as a legitimate LLC, which Defendants infiltrated

1 and conducted through a pattern of racketeering
2 activity. See FAC ¶ 15. CKE therefore existed
3 separately from the alleged racketeering activity for
4 which it was used, and thus constitutes a RICO
5 enterprise. See United Energy Owners Comm., Inc. v.
6 U.S. Energy Mgmt. Sys., Inc., 837 F.2d 356, 362-64 (9th
7 Cir. 1988).

8 As for the alleged association-in-fact enterprise,
9 however, Plaintiff's allegations are insufficient. An
10 association-in-fact enterprise is "a group of persons
11 associated together for a common purpose of engaging in
12 a course of conduct." Turkette, 452 U.S. at 583. The
13 enterprise must have some sort of structure or
14 framework, meaning there must be "relationships among
15 those associated with the enterprise." Boyle v. United
16 States, 556 U.S. 938, 946 (2009). Here, the FAC does
17 not allege any relationship between CKE and APC. While
18 Plaintiff alleges that Daroya-Lushina and Ramos used
19 both entities to commit racketeering activity, the acts
20 involving each entity were completely unrelated to one
21 another. The two companies therefore had no common
22 purpose, and they were not associated together to form
23 "a vehicle for the commission of two or more predicate
24 acts." See Odom v. Microsoft Corp., 486 F.3d 541, 552
25 (9th Cir. 2007). Plaintiff therefore fails to allege
26 the existence of an association-in-fact enterprise.

27 Because Plaintiff has sufficiently alleged the
28 existence of an enterprise through CKE only, the Court

1 analyzes the predicate acts discussed in the FAC
2 pertaining solely to CKE.

3 b. Injury Caused by Predicate Acts

4 A RICO claim requires a pattern of two or more
5 predicate acts that cause injury to the plaintiff's
6 business or property. Living Designs, 431 F.3d at 361.
7 A predicate act is "any act indictable under any of the
8 statutory provisions listed in 18 U.S.C. § 1961(1)." In
9 re Toyota Motor Corp., 785 F. Supp. 2d 883, 918 (C.D.
10 Cal. 2011). Here, the predicate acts Plaintiff alleges
11 are mail fraud in violation of 18 U.S.C. § 1341 and wire
12 fraud in violation of 18 U.S.C. § 1343. See FAC ¶ 36.

13 Plaintiff alleges that Defendants committed mail
14 and wire fraud through the CKE enterprise for
15 essentially two purposes. First, Ramos engaged in a
16 single act of wire fraud to falsely identify Daroya-
17 Lushina as the sole manager of CKE. FAC ¶ 15. Second,
18 Defendants jointly engaged in mail or wire fraud to sell
19 the Property, which was CKE's main asset, and to collect
20 the proceeds of the sale for themselves. Id. ¶¶ 19, 21.
21 In turn, Plaintiff suffered two distinct injuries. The
22 first act of wire fraud deprived Plaintiff of his
23 rightful interest in CKE. Id. ¶ 14. The sale of the
24 Property deprived Plaintiff of his rightful share in the
25 proceeds of the sale. Id.

26 While Plaintiff's first injury — loss of membership
27 interest in CKE — may be a cognizable RICO injury, this
28 harm arose from a single act of wire fraud. A single

1 predicate act is insufficient to establish a pattern of
2 racketeering activity. 18 U.S.C. § 1961(5) (“[A]
3 ‘pattern of racketeering activity’ requires at least two
4 acts of racketeering activity.”). Thus, the merit of
5 Plaintiff’s RICO claim turns on whether Plaintiff has
6 alleged that Defendants’ other predicate acts – related
7 to the sale of the Property – caused a cognizable RICO
8 injury. The Court concludes that Plaintiff has not, and
9 Plaintiff’s RICO claim therefore fails. Because this
10 conclusion is dispositive, the Court does not reach
11 Defendants’ other arguments as to the merits of the RICO
12 claim.

13 To allege a cognizable RICO injury, Plaintiff must
14 show “a harm to a specific business or property
15 interest” that was caused directly by Defendants’ RICO
16 violation. In re ZF-TRW Airbag Control Units Prods.
17 Liab. Litig., No. LA ML19-02905 JAK (FFMx), 2022 WL
18 522484, at *59-60 (C.D. Cal. Feb. 9, 2022) (citations
19 omitted). Here, Plaintiff alleges that Defendants’ sale
20 of the Property deprived Plaintiff of his rightful share
21 in the sale’s proceeds. FAC ¶ 14. Plaintiff argues
22 that because he has a 50% ownership interest in CKE, he
23 is entitled to at least 50% of the proceeds from the
24 sale of CKE’s main asset. Opp’n 10:8-13.

25 Under California law, however, “members of [an] LLC
26 hold no direct ownership interest in the company’s
27 assets.” PacLink Commc’ns Int’l, Inc. v. Superior Ct.,
28 109 Cal. Rptr. 2d 436, 440 (Cal. Ct. App. 2001). Thus,

1 "the members cannot be directly injured when the company
2 is improperly deprived of those assets." Id. That
3 deprivation "constitutes an injury to the company
4 itself," and any action brought by an individual member
5 must be derivative in nature on the company's behalf.
6 Id. Here, Plaintiff's alleged deprivation of his fair
7 share of the proceeds is only incidental to the injury
8 caused to CKE itself. See PacLink, 109 Cal. Rptr. 2d at
9 441. Because the injury alleged in the FAC was one to
10 the LLC and not to Plaintiff directly, Plaintiff lacks
11 standing to assert it. See Sparling v. Hoffman Const.
12 Co., Inc., 864 F.2d 635, 640-41 (9th Cir. 1988)
13 (concluding that shareholder plaintiff lacked RICO
14 standing where RICO claims were based on injury to
15 corporation). Plaintiff has therefore failed to assert
16 a cognizable RICO injury caused by the predicate acts
17 committed by Defendants in selling the Property.

18 In sum, while Plaintiff may have properly alleged
19 the existence of an enterprise and the requisite number
20 of predicate acts, Plaintiff has failed to allege that
21 those acts caused harm to Plaintiff's business or
22 property. Plaintiff therefore fails to state a civil
23 RICO claim, and the Court **GRANTS** Defendant's Motion.

24 2. Supplemental Jurisdiction

25 Defendants further request that the Court decline
26 to exercise supplemental jurisdiction over Plaintiff's
27 state law claims. Mot. 9:15-16. A district court may
28 decline to exercise supplemental jurisdiction over state

1 law claims where the court has dismissed all claims over
2 which it has original jurisdiction. 28 U.S.C.
3 § 1367(c)(3). “[I]f the federal claims are dismissed
4 before trial . . . the state claims should be dismissed
5 as well.” United Mine Workers of Am. v. Gibbs, 383 U.S.
6 715, 726 (1966).

7 Here, Plaintiff’s second through fifth causes of
8 action are state law claims within the Court’s
9 discretionary supplemental jurisdiction. Because
10 Plaintiff’s only federal claim is subject to dismissal,
11 the Court declines to address the Motion’s arguments as
12 to Plaintiff’s conversion claim. If Plaintiff does not
13 amend the FAC to properly state a federal claim for
14 relief, the Court will dismiss the remaining state law
15 claims. See Nguyen v. Global Equip. Servs. & Mfg.,
16 Inc., No. 18-cv-01824-NC, 2018 WL 10758158, at *6 (N.D.
17 Cal. Oct. 2, 2018).

18 3. Leave to Amend

19 “The court should give leave [to amend] freely when
20 justice so requires.” Fed. R. Civ. P. 15(a)(2). “Rule
21 15’s policy of favoring amendments to pleadings should
22 be applied with ‘extreme liberality.’” United States v.
23 Webb, 655 F.2d 977, 979 (9th Cir. 1981). Against this
24 extremely liberal standard, the Court may consider “the
25 presence of any of four factors: bad faith, undue delay,
26 prejudice to the opposing party, and/or futility.”
27 Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708,
28 712 (9th Cir. 2001).

1 Here, Plaintiff requests leave to amend to cure the
2 FAC's deficiencies and to allege facts related to
3 "further fraudulent actions" that may support a civil
4 RICO claim. See Opp'n 1:6-9. It is possible that
5 Plaintiff could allege new facts to cure the
6 deficiencies outlined above. The Court therefore
7 dismisses Plaintiff's RICO claim **with leave to amend**.

8 **III. CONCLUSION**

9 Based on the foregoing, the Court **GRANTS**
10 Defendants' Motion as to Plaintiff's RICO claim **with**
11 **leave to amend**. Plaintiff may file a Second Amended
12 Complaint to cure the deficiencies outlined above within
13 thirty (30) days of this Order. Because the only
14 federal claim is subject to dismissal, the Court
15 declines to address the merits of Plaintiff's state law
16 causes of action.

17 **IT IS SO ORDERED.**

18
19 DATED: August 16, 2022

/s/ Ronald S.W. Lew

20 **HONORABLE RONALD S.W. LEW**
21 Senior U.S. District Judge
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